IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1539 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

KISHORRAI GANPATRAI BHATT SINCE DECEASED THRO'HIS HEIRS

Appearance:

1. First Appeal No. 1539 of 1980

MR LB DABHI AGP for appellant - State

MR RS SANJANWALA for Respondents

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 21/11/2002

ORAL JUDGEMENT

1. This appeal which is filed under Section 96 of the Code of Civil Procedure ('the Code' for short) is directed against the judgment and decree dated December

31, 1979 rendered by the learned Judge, City Civil Court (Court No.10), Ahmedabad, in Civil Suit No. 1705 of 1975 by which suit filed by the deceased respondent for declaration that the order dated July 5, 1972 passed by the Director of Manpower, Employment and Training compulsorily retiring him from the service was illegal and it be quashed and he be reinstated in service with full backwages and for recovery of Rs.15,245/- as loss of salary and other allowances with interest of Rs.773/- alongwith the costs of the suit from the appellant, came to be partly allowed and thereby declaration as sought for was granted and the appellant was ordered to pay to the deceased respondent an amount of Rs.10,000/- towards arrears of salary and allowance together with cost whereas rest of the reliefs sought for were disallowed.

2. The appellant was the defendant whereas the respondent was the plaintiff who has died during the pendency of the appeal and, therefore, his heirs and legal representatives were brought on record as per the order dated 15.1.2002 passed by this Court in Civil Application No. 12592 of 2001 and, therefore, the parties are hereinafter referred to as "deceased plaintiff" and "defendant" in this judgment.

3. The facts are these:

3.1. As per the case of the deceased plaintiff, he joined the service as Engine attendant in mechanical side of L.D. Engineering College on 8.10.1951. Thereafter he was promoted as Chargeman, Steam Section and ultimately he was promoted as Foreman/Instructor and he was serving in that capacity in the Industrial Training Institute at Ahmedabad under the Directorate of Manpower, Employment and Training, Government of Gujarat, Ahmedabad and his last basic salary was Rs.590/- per month. He was serving sincerely, loyally and faithfully and he had a clean record and in appreciation of his service, he was twice given promotion and he was physically and mentally fit and was able to discharge his duties and was doing his work satisfactorily.

3.2. However, on 6.7.1972 he was served by the Director of Manpower, Employment and Training with an order dated 5.7.1972 passed under Rule 161 (1) of the Bombay Civil Services Rules ('the Rules' for short) to the effect that he shall be compulsorily retired from service with effect from 7.10.1972. The deceased plaintiff on receipt of the above mentioned order on 6.7.1972, applied for granting him all the leave due to him preparatory to retirement on that very day and the

leave due to him was 130 days Earned Leave (Full pay) and 360 days leave on medical ground (Half pay). However, he was informed by the Director by his letter dated 30.9.1972 that his leave was sanctioned for 89 days only i.e., from 11.7.1972 to 7.10.1972 and thus his request for rest of the leave to which he was entitled to was turned down without assigning any reason whatsoever.

3.3. It was the case of the deceased plaintiff that the aforesaid order dated 5.7.1972 regarding his compulsory retirement was malafide and bad in law and it was made in order to punish him. It was pleaded that the deceased plainiff had a clean service record and during the whole tenure of his service, he was never warned for any lapse whatsoever and instead he was given promotions twice and thus his sudden and unceremonious retirement from service compulsorily was illegal and unjustified and the said order was also bad in law inasmuch as it was not passed by the appointing authority and under the Rules he was entitled to continue in service till he completed 58 years as he was quite fit and willing to serve.

3.4. According to the deceased plaintiff, had he not been retired compulsorily he would have remained in service till he attained the age of 58 years and he would have been entitled to the salary for 221 days which was refused and it comes to Rs.5,245/- Moreover, he would have also been entitled to the salary and other allowances for the three years' period and though it exceeded Rs.25,000/- he restricted his claim to Rs.10,000/-.

3.5. The deceased plaintiff, therefore, served statutory notice under section 80 of the Code on 19.12.1973. Though it was duly served on the defendant, it remained unattended and, therefore, the deceased plaintiff was obliged to file the suit for the reliefs to which reference is made earlier.

4. The defendant, State of Gujarat, resisted the suit by filing written statement at Ex.7 and additional written statements at Exhs.20 and 43 wherein it was inter alia stated that the suit was false and it was not admitted. All the averments made in the plaint have been denied by the defendant. So far as the order of compulsory retirement of deceased plaintiff is concerned, the same was admitted. But according to it, the deceased plaintiff's confidential record was not clean and the details of the adverse remarks in the confidential service record for the years 1961-62 to 1969 revealed that his work was below average and his capacity and

ability to assist the head of the institution in shouldering the burden of administration and teaching was also below average and, therefore, it was decided by the competent authority to compulsorily retire him at the age of 55 years and so the impugned order was issued.

4.1. With regard to leave application submitted by the deceased plaintiff, it was contended that he was granted leave for 89 days but under Rule 753 of the Rules, the rest of leave of the deceased plaintiff lapsed and so he was informed accordingly by letter dated 27.6.1973. Therefore it was denied that the request of the deceased plaintiff for rest of the leave was turned down without considering the Government resolution dated 8.1.1970 and without assigning any reason and, therefore, according to the defendant, the question of payment of salary did not arise as the plaintiff's leave was never refused. It was also denied that the order of compulsory retirement of the deceased plaintiff was malafide, illegal and unjustifiable and he was entitled to be continued in service till he completed 58 years looking to his confidential record. Lastly it was prayed that the deceased plaintiff was not entitled to any of the reliefs as claimed and the deceased plaintiff's suit be dismissed with costs.

5. The learned trial Judge framed the issues at Ex.16.

6. On appreciation and evaluation of the sole oral testimony of the deceased plaintiff and the documents produced by him and the defendant and the submissions advanced by the learned advocates appearing for the parties, the learned trial Judge recorded the following findings:

(i) The deceased plaintiff's request for leave preparatory to retirement was rightly rejected.
(ii) The deceased plaintiff was not entitled to salary and other allowances for the earned leave and leave on medical ground remaining unenjoyed due to such sudden retirement order.
(iii) The order dated 5.7.1972 retiring the deceased plaintiff compulsorily was malafide in law and it was void.
(iv) The deceased plaintiff was entitled to full salary and allowances from the date he was retired to completion of 58 years.
(v) The deceased plaintiff's services were not illegally terminated without taking into consideration the Government Resolution No.

P.B.N.1064/1769/KJ dated 8.1.1970.

(vi) The deceased plaintiff was entitled to decree for Rs.10,000/- only.

On the aforesaid premises, the learned trial Judge allowed the suit in part by granting declaration as prayed for decreeing the suit for recovery of Rs.10,000 for the period from 7.10.1972 to 6.10.1975, that is, the date on which deceased plaintiff would have attained the age of superannuation, that is, 58 years and rest of the claims of the deceased plaintiff were dismissed.

7. It is these findings and the consequential decree recorded by the learned trial Judge which is on the anvil of scrutiny before this Court at the instance of the defendant, State of Gujarat in this First Appeal.

8. Mr. L.B.Dabhi, learned AGP for the defendant State of Gujarat contended that the finding recorded by the learned trial Judge and the consequential decree is contrary to law and evidence on record. It is also asserted by him that there was material on the record for the concerned authorities to pass the order of compulsory retirement of the deceased plaintiff and therefore it cannot be said that the said order of compulsory retirement was passed either arbitrarily or due to malafide or on collateral grounds. It is also emphatically contended by the learned AGP that the learned trial Judge has not properly appreciated the relevant service rules in passing the impugned order. It is therefore urged that the judgment and decree passed by the learned trial Judge is erroneous, unjust and illegal and therefore deserves to be quashed and set aside. It is therefore urged to allow the appeal by quashing and setting aside the impugned judgment and decree.

9. Mr. R.S. Sanjanwala, learned advocate for the plaintiff has supported the judgment and decree passed by the learned trial Judge throughout and contended that by passing the impugned judgment and decree the learned trial Judge has not committed any illegality. He further contended that no ground is made out by the appellant for interference with the impugned judgment and decree and there is no merit in the First Appeal and therefore urged that it may be dismissed with costs.

10. I have considered the submissions advanced by Mr. Dabhi, learned AGP for the defendant and Mr. R.S. Sanjanwala, learned advocate for the plaintiff. I have also perused the averments made in the memo of appeal, grounds set out therein and the impugned judgment and

decree which has given rise to the present appeal and the set of evidence which has been furnished by Mr.Dabhi, learned AGP during the course of his submissions.

11. The only question which calls for determination in this appeal is as to whether the impugned order dated 5.7.1972 compulsorily retiring the deceased plaintiff from the service was bad in law and malafide in law and therefore deserves to be quashed and set aside?

12. In this connection, on having perusal of the oral testimony of the deceased plaintiff recorded by the learned trial Judge and the documents forming part of the trial court's record it is seen that the learned trial Judge has accepted the evidence adduced by the deceased plaintiff with respect to his clean service career. It has also come in evidence that deceased plaintiff was given promotion twice. He was not given any adverse remarks in his confidential report and even no such adverse remarks were ever communicated to him. It may also be appreciated that the defendant - State of Gujarat has also not produced any record of confidential report of the deceased plaintiff. However, the defendant has produced an extract of the file pertaining to the deceased plaintiff at Ex. 22. On having perusal of the same it is clear that the deceased plaintiff was working as Foreman/Instructor from 18.5.1961. His confidential reports from 1965 to 1970 revealed that he was graded as "Fair" for the years 1965 to 1967 and "Fairly Good" for the year 1967-68 and "Good" for the year commencing from 1.4.1968 upto 31.3.1970. It was also mentioned therein that the plaintiff was (i) Good Judge of persons and assessed correctly (ii) faithful and sincere to his superiors (iii) hard working (iv) thinking clearly and sufficient knowledge for his trade and during last two years i.e., 1969 and 1970 nothing was adverse against him. Of course, the notes prepared by the Office of the Additional Director of Training revealed that the reporting officer had made adverse remarks in the confidential reports of the deceased plaintiff during the period 1965 to 1969 to the effect that by temperament the deceased plainiff was excited and for exercise of delegated powers he had tendency to refer in classback for guidance and for intelligence he had no proper judgment. So the question that arose for consideration was as to whether the above materials which were pointed out from the confidential report file of the deceased plaintiff were sufficient for the appropriate authority to bonafide form the opinion for compulsory retirement of the deceased plaintiff in the public interest. The learned trial Judge after referring to the relevant

provisions of Rule 161 of the Rules observed that on consideration of the evidence the inescapable conclusion was that the impugned order of compulsory retirement of the deceased plaintiff passed by the Director of Manpower Employment and Training on 5.7.1972 was not bonafide and it was arbitrary in nature as the condition precedent in exercise thereof had not been complied with and it is bad in law and void ab-initio and therefore liable to be quashed and set aside.

13. I am in complete agreement with the findings recorded by the learned trial Judge in this regard and more particularly in view of the evidence adduced before the learned trial Judge and the relevant rules which have been pointed out before the learned trial Judge.

14. There is no dispute that deceased plaintiff was entitled to serve till the age of 58 years, that is, upto 6.10.1975. As the plaintiff was made to compulsorily retire with effect from 7.10.1972 he could not serve for three years and, therefore, obviously the deceased plaintiff would have been entitled to salary for the aforesaid period. Though such arrears of salary and allowances originally claimed by the deceased plaintiff was Rs.25,632/- he had restricted his claim upto Rs.10,000/- and therefore the learned trial Judge has very rightly passed decree to the tune of RS.10,000/-

15. No other contention is canvassed before me.

16. Seen in the above context, I am of the opinion that no illegality is committed by the learned trial judge in passing the impugned judgment and decree and I myself find in complete agreement with the finding and the consequential decree recorded by the learned trial judge. Therefore, I find no valid reason or justifiable ground to interfere with the impugned judgment and decree and hence the appeal deserves to be dismissed by confirming the judgment and decree passed by the learned trial Judge.

17. For the foregoing reasons, the appeal fails and accordingly it is dismissed with no order as to costs.

(A.M. Kapadia, J.)

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